



**Nzwili v Zheng Hong Limited (Appeal E105 of 2024)
[2025] KEELRC 2451 (KLR) (17 September 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2451 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
APPEAL E105 OF 2024
NJ ABUODHA, J
SEPTEMBER 17, 2025**

BETWEEN

DOMINIC MBITHI NZWILI APPELLANT

AND

ZHENG HONG LIMITED RESPONDENT

(Being an appeal from the Judgment and decree of Hon. Becky Cheloti Mulema (CM), Milimani delivered on 1st March, 2024.)

JUDGMENT

1. Through the Memorandum of Appeal dated 12th March, 2024 the Appellant appeals against the Judgement of Hon. Becky Cheloti Mulema (CM), Milimani delivered on 1st March, 2024. The Appeal was based on the grounds among others that:
 - a. The trial magistrate erred in finding that the respondent had valid reasons to terminate the claimant's employment.
 - b. The trial magistrate erred in finding that the respondent had followed due process in terminating the respondent had followed due process when terminating the appellant's employment.
 - c. The trial magistrate erred in finding that the appellant was not entitled to 12 months' salary as compensation, public holidays pay and that the appellant had exhausted his leave days.
2. The Appellant therefore prayed that the appeal be allowed and the judgment of the trial court be set aside and the costs of the appeal be awarded to the appellant.
3. The Appeal was disposed of by written submissions.



Appellant's Submissions

4. The Appellant's Advocate Mr. Mutonyi submitted among others that the finding of a valid reason for termination was not substantiated by sufficient evidence. According counsel, the *Employment Act, 2007* requires that an employer must demonstrate a valid reason and justifiable reason for termination as was stated in the case of *Kenya Airways Ltd vs. Muriithi [2010]eKLR* where it was emphasized that the burden of proof lies on the employer. In this case the respondent failed to provide concrete reasons justifying the termination rendering the decision erroneous.
5. According to Counsel, the appellant had stated that in December, 2021 his contract was unfairly terminated. The claimant informed the court that he was informed by the respondent that his services were no longer needed as KRA had shut down the operations of the respondent. The action by the respondent, according to counsel, was contrary to section 45(2) of the *Employment Act*.
6. Mr. Mutonyi further submitted that at page 26 of the record of appeal, it is stated that more than 100 employees were terminated and that if indeed KRA had shut down the operations of the respondent then the termination of the appellant then it amounted to redundancy in which section 40 of the *Employment Act* ought to have been followed. Counsel relied on the case of *Kenya Airways Ltd vs. Aviation Workers Union & 3 others [2014] eKLR* where the Court of Appeal stated that redundancy must be lawful and must be substantiated and procedurally fair. Counsel further relied on the case of *Kenya Breweries Ltd & 3 others vs. Symon Wairobi Gatuma [2017] eKLR*.
7. The Court did not find in the file submissions by the respondent as directed by the court that parties file physical copies of submissions even if filed in the portal.

Determination.

8. The principles which guide this court in an appeal from a trial court are now well settled. In *Gitobu Imanyara & 2 others v Attorney General [2016] eKLR*, the Court of Appeal stated that;

“[A]n appeal to this Court from a trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put, they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowances in this respect”
9. This appeal revolves around the question whether the trial court erred in finding that the appellant had not proved that the respondent had valid reasons for terminating the appellant's employment. The appellant therefore urged the court to set aside the finding and award the appellant the reliefs sought in the statement of claim.
10. The appellant's service was terminated on the grounds that KRA had shut down the operations of the respondent however from the record, the reasons for the shutdown were not provided. KRA does not shut down operations of a business save reasons of breach of tax law. If that be the case, then the respondent brought KRA to themselves and therefore the termination of the appellant's and his colleagues' service was not on disciplinary grounds thus amounted to redundancy. The respondent therefore ought to have adhered to section 40 of the Act.
11. Redundancy is defined as termination of employment, occupation, job or career by involuntary means through no fault of the employee, where services rendered become superfluous. Section 40 of the Act provides for the procedure to be followed in such cases. No evidence is provided in Court that such



procedure was followed. The Court therefore finds and holds that the termination was a redundancy section 40 of the Act ought to have been followed. The termination was therefore unfair under section 45 of the Act and allows the appeal and awards the appellant as follows:

- i. One month's notice in lieu of pay. Kshs. 19,000/-
- ii. Severance pay @ 15 days' salary for each year of complete year of service (4 years). Kshs. 38,000
- iii. 4 month's salary as compensation for
Unfair termination of service Kshs. 76,000/-
Total Kshs. 133,000
- iv. The appellant shall have costs of the appeal
- v. The appellant was a general worker hence did not have any skill or profession and had only worked for approximately 4 years. Therefore, an award of 4 month's salary is justifiable. The appellant did not provide any evidence of the nature work they were doing that required them to work during public holidays. Further they did not provide any evidence that they applied for leave and was refused. These claims are therefore rejected.

1. It is so ordered.

Dated at Nairobi this 17th day of September, 2025

Delivered virtually this 17th day of September, 2025

Abuodha Nelson Jorum

Presiding Judge-Appeals Division

